

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KOHCHISE JACKSON,

Plaintiff,

v.

CHS TX, INC., et al.,

Defendants

Case No.: 2:19-cv-13382-GAD-PTM

U.S. DISTRICT COURT JUDGE
HON. GERSHWIN A. DRAIN

**DEFENDANTS CHS TX, INC. AND
KEITH PAPENDICK, M.D.'S MOTION TO DESIGNATE
PORTIONS OF JEFFREY BOMBER, D.O.'S
DEPOSITION FOR USE AT TRIAL**

Defendants CHS TX, Inc. (“CHS”) and Keith Papendick, M.D. (Dr. Papendick and collectively “Defendants”), by and through counsel, pursuant to Fed. R. Civ. P. 32, Fed. R. Evid. 804 and in accordance with LR 7.1, move this Honorable Court for an Order permitting Defendants to use certain designated portions of Dr. Bomber’s deposition transcript at trial, as he is located in Naubinway, Michigan, more than 100 miles away from this Court.

Pursuant to LR 7.1, the undersigned counsel certifies that on July 29, 2025, the parties met and conferred about the designation of the deposition of Dr. Bomber for use at trial. Plaintiff did not agree to designating Dr. Bomber’s deposition for use at trial.

Accordingly, Defendants CHS TX, Inc. and Keith Papendick, M.D. respectfully request that this Court grant Defendants' Motion to designate portions of Dr. Bomber's deposition for use at trial.

Dated: July 30, 2025

Respectfully submitted,

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U.S. DISTRICT COURT JUDGE
HONORABLE GERSHWIN A.
DRAIN

**DEFENDANTS CHS TX, INC. AND KEITH PAPENDICK, M.D.'S
BRIEF IN SUPPORT OF ITS MOTION TO DESIGNATE PORTIONS OF
JEFFREY BOMBER, D.O.'S DEPOSITION FOR USE AT TRIAL**

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STATEMENT OF ISSUES PRESENTED

1. **Whether CHS TX, Inc. and Keith Papendick, M.D.'s motion to designate portions of Dr. Bomber's deposition transcript at trial should be granted?**

Defendants' Answer: Yes

Plaintiff May Answer: No

The Court should Answer: Yes

CONTROLLING OR MOST APPROPRIATE AUTHORITY

- Fed. R. Civ. P. 32
- Fed. R. Evid. 804
- E.D. Michigan Local Rule 7.1
- *Allgeier v. United States*, 909 F.2d 869 (6th Cir. 1990)
- *Floyd's 99 Holding, LLC v. Jude's Barbershop, Inc.*, No. 12-cv-14696, 2014 WL 12662311 (E.D. Mich. July 3, 2014)
- *United States v. Campbell*, 845 F.2d 1374 (6th Cir. 1988)

INTRODUCTION

Defendants request this Court grant its Motion and issue an Order allowing them to admit into evidence certain portions of the deposition transcript of Jeffrey Bomber, D.O. Plaintiff has not agreed to the designation of Dr. Bomber's deposition transcript.

Dr. Bomber is an “unavailable” witness within the meaning of Fed. R. Civ. P. 32, as he currently resides in Naubinway, Michigan,¹ more than 100 miles away from this Court. As such the use of his deposition transcript is appropriate under Fed. R. Evid. 804. Plaintiff took the deposition of Dr. Bomber on May 28, 2021. Trial is currently set for August 18, 2025. (See ECF No. 119). In preparation of trial, Defendants have identified Dr. Bomber as a potential witness. Defendants seek to admit certain portions of Dr. Bomber’s deposition testimony into evidence pursuant to Fed. R. Civ. P. 32.

Deposition designations to be used at trial are governed by Fed. R. Civ. P. 32. *Floyd’s 99 Holding, LLC v. Jude’s Barbershop, Inc.*, No. 12-cv-14696, 2014 WL 12662311, at *2 (E.D. Mich. July 3, 2014) (**Exhibit A**). Where a deponent resides more than “100 miles from the place of trial residence,” that according to Sixth Circuit precedent satisfies Fed. R. Civ. P. 32(a)(4)(E). *Id. Allgeier v. United States*, 909 F.2d 869, 876 (6th Cir. 1990). Further, Fed. R. Evid. 804 allows a hearsay exception when

¹ Naubinway, Michigan is over 300 miles away from the courthouse.

a witness is unavailable but has given a deposition in the same proceeding. *United States v. Campbell*, 845 F.2d 1374, 1377-78 (6th Cir. 1988).

Dr. Bomber lives more than 100 miles away, Plaintiff took the deposition of Dr. Bomber on May 28, 2021 (**Exhibit B**), and because the requirements of Fed. R. Civ. P. 32 and Fed. R. Evid. 804 are met, the prior deposition testimony of Dr. Bomber is admissible. At this time, Defendants have not designated specific portions of Dr. Bomber's deposition transcript to be read into trial and will provide Plaintiff with the specific portions, in accordance with this Court's Practice Guidelines for Trials.

CONCLUSION

The designated portions of Dr. Bomber's May 28, 2021, deposition transcript is admissible as substantive evidence at trial. Dr. Bomber is located further than 100 miles away from the courthouse, permitting the designation of deposition testimony in lieu of live testimony. Accordingly, Defendants respectfully request the Court enter an Order permitting them to designate portions of Dr. Bomber's deposition in accordance with this Court's Practice Guidelines for Trials.

Dated: July 30, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on July 30, 2025, a copy of the foregoing document in the above-captioned proceeding has been served upon the attorneys listed below via electronic mail:

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Upon consideration of Defendants Motion, and any response by Plaintiff filed thereto, the Court GRANTS Defendants' motion for the reasons stated therein.

To the extent Defendants objected to an exhibit on Plaintiff's Proposed Exhibit List by referring to this Motion, the Defendants' Objections are SUSTAINED for the reasons stated herein and the Exhibits are EXCLUDED from trial.

Dated:

Hon. Gershwin A. Drain